STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL BERRIS, Plaintiff-Appellee,	UNPUBLISHED March 9, 2006
v	No. 256112 Court of Claims
MICHIGAN STATE UNIVERSITY BOARD OF TRUSTEES, Defendant-Appellant.	LC No. 04-000007-MZ

Before: Kelly, P.J., and Meter and Davis, JJ.

PER CURIAM.

In this slip and fall case, defendant appeals as of right from an order denying its motion for summary disposition based on governmental immunity. We reverse.

Plaintiff alleged that while living in a dormitory on the Michigan State University campus, he slipped and fell on an unnatural accumulation of ice on the sidewalk adjacent to an exterior dormitory door. He alleged that the buildup of ice was caused by water draining onto the sidewalk from an overhanging drainage pipe affixed to the dormitory. Plaintiff contended that his cause of action fell under the public building exception to governmental immunity, MCL 691.1406. Defendant moved for summary disposition, arguing that the public building exception did not apply because the sidewalk where defendant fell was not a part of the dormitory, that plaintiff was not a member of the public for purposes of the exception, and that plaintiff had failed to prove the requisite causation. The court denied the motion and this appeal ensued.

"We review de novo a trial court's ruling on a motion for summary disposition." *Maskery v Univ of Michigan Bd of Regents*, 468 Mich 609, 613; 664 NW2d 165 (2003). "'MCR 2.116(C)(7) tests whether a claim is barred because of immunity granted by law, and requires consideration of all documentary evidence filed or submitted by the parties.'" *Id.*, quoting *Glancy v Roseville*, 457 Mich 580, 583; 577 NW2d 897 (1998).

Defendant argues that plaintiff has failed to plead in avoidance of the governmental immunity statute, MCL 691.1407(1), by stating a claim under the public building exception. MCL 691.1406 states, in pertinent part:

> Governmental agencies have the obligation to repair and maintain public buildings under their control when open for use by members of the public. Governmental agencies are liable for bodily injury and property damage resulting from a dangerous or defective condition of a public building if the governmental agency had actual or constructive knowledge of the defect and, for a reasonable time after acquiring knowledge, failed to remedy the condition or to take action reasonably necessary to protect the public against the condition. Knowledge of the dangerous and defective condition of the public building and time to repair the same shall be conclusively presumed when such defect existed so as to be readily apparent to an ordinary observant person for a period of 90 days or longer before the injury took place.

Our Supreme Court has identified five factors to consider when determining whether the public building exception applies in a given circumstance:

> To come within the narrow confines of this exception, a plaintiff must prove that (1) a governmental agency is involved, (2) the public building in question was open for use by members of the public, (3) a dangerous or defective condition of the public building itself exists, (4) the governmental agency had actual or constructive knowledge of the alleged defect, and (5) the governmental agency failed to remedy the alleged defective condition after a reasonable period or failed to take action reasonably necessary to protect the public against the condition after a reasonable period. [*Kerbersky v Northern Michigan Univ*, 458 Mich 525, 529; 528 NW2d 828 (1998) (emphasis omitted).]

Defendant argues that plaintiff failed to establish that "a dangerous or defective condition of the public building itself exist[ed]." See *id.* We agree. Indeed, the Supreme Court has held that "[a] danger of injury caused by the area in front of an entrance or exit is not a danger that is presented by a physical condition of the building itself." *Horace v Pontiac*, 456 Mich 744, 757; 575 NW2d 762 (1998).

Plaintiff contends that *Horace* does not bar his claim because the Supreme Court later indicated, when considering a claim brought for an injury occurring on a terrace connecting a sidewalk to a public building entrance, that *Horace* does not provide a bright-line rule restricting the public building exception to building interiors. *Fane v Detroit Library Comm'n*, 465 Mich 68, 79; 631 NW2d 678 (2001). *Fane* reversed this Court's grant of summary disposition to the defendant and held that "the public building exception can apply to parts of a building that extend beyond the walls." *Id.* at 70. The *Fane* Court reasoned as follows:

> The appeals court decision mistakenly portrays *Horace* as stating a bright-line rule precluding liability for injuries occurring from dangerous or defective conditions of building parts outside an entrance or exit. By imposing an absolute bar on liability for injuries arising from something outside the four walls of a building, the opinion precludes the possibility that an external part might be "truly part of the building itself." [*Id.* at 77.]

The Court further stated, "[i]n determining whether an item or area outside the four walls of a building is 'of a public building,' the courts should consider whether the item or area where the injury occurred is physically connected to and not intended to be removed from the building." *Id.* at 78.

Plaintiff contends that the drainage pipe that allegedly resulted in his fall was physically connected to and not intended to be removed from the building and that *Fane* therefore controls the outcome of the instant case. However, plaintiff did not stumble over the drainage pipe itself; instead, he allegedly fell on *ice* that had accumulated as a result of the drainage pipe. This is a key distinction, given that the statutory exceptions to governmental immunity "are to be narrowly construed." *Horace, supra* at 749. We hold that "the Legislature did not intend [the public building] exception to the broad grant of governmental immunity to apply in [the present] circumstances because it is inconsistent with a narrow reading of the exception." *Id.* at 746.

As noted in *Horace, supra* at 754, "[i]t requires a broad, rather than narrow, reading of the building exception to find that the building exception applies to anything but the building itself." Although the allegedly dangerous ice at issue here may have resulted from water directed to its location because of an appurtenance to the building, we conclude that to extend the public building exception to the instant situation would require a "broad, rather than narrow, reading of the building exception . . . ." *Id.* Plaintiff's fall essentially resulted from an icy sidewalk near the door of the building, and the rule of *Horace, supra* at 757 ("[a] danger of injury caused by the area in front of an entrance or exit is not a danger that is presented by a physical condition of the building itself") applies. Therefore, because plaintiff did not sufficiently plead a case in avoidance of governmental immunity, see *Mack v Detroit*, 467 Mich 186, 198; 649 NW2d 47 (2002), the trial court should have granted summary disposition to defendant.[1]

Given our resolution of this case, we need not address the additional issues raised by defendant.

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[1] We note that, in contrast to plaintiff's argument, further discovery is not warranted because it would not change the outcome of the case. See *State Treasurer v Sheko*, 218 Mich App 185, 190; 553 NW2d 654 (1996). Also, the dissent states that we construe *Horace* "as an absolute bar [to an application of the public building exception] where an injury happens to take place on the sidewalk outside a building." We do not agree with this interpretation of our opinion. Instead, we hold today that, *under the particular facts of this case* – involving ice resulting from water directed to its location because of an appurtenance to a building – the statement from *Horace* that "[a] danger of injury caused by the area in front of an entrance or exit is not a danger that is presented by a physical condition of the building itself" applies. *Horace, supra* at 757. Plaintiff's fall essentially resulted from an icy sidewalk, and we hold that to extend the public building exception to the instant situation would require a "broad, rather than narrow, reading of the building exception . . . ." *Id.* at 754. A broad reading such as this is inappropriate. See, generally, *id.* at 746.

Reversed and remanded for entry of judgment in favor of defendant. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly
/s/ Patrick M. Meter